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Attorneys for Defendants
C. R. Bard, Inc. and
Bard Peripheral Vascular, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

IN RE: Bard IVC Filters Products Liability MDL NO. 15-02641-PHX-DGC
Litigation

This Document Relates to:

WAYNE RUDEN,

Plaintiff,

Case No. CV-16-00344-PHX-DGC

v.

C. R. BARD, INC., a New Jersey
Corporation; AND BARD PERIPHERAL
VASCULAR INC., an Arizona
Corporation,

Defendants.

**DEFENDANTS C. R. BARD, INC.'S
AND BARD PERIPHERAL
VASCULAR, INC.'S RESPONSE TO
CALIFORNIA PACIFIC MEDICAL
CENTER'S MOTION TO DISMISS OR
IN THE ALTERNATIVE MOTION TO
REMAND**

Defendants C. R. Bard, Inc. and Bard Peripheral Vascular, Inc. (collectively, "Bard")
hereby file this Response to Defendant California Pacific Medical Center's ("CPMC")

1 Motion to Dismiss Plaintiff's Amended Complaint or in the Alternative Motion to Remand
2 (the "Motion").

3 On February 26, 2016, Bard filed its Response in Opposition to Plaintiff's Motion to
4 Remand [MDL 2641 Dkt. No. 887] (Bard's "Response"), arguing that Bard properly removed
5 this case to federal court based on diversity jurisdiction because Plaintiff fraudulently
6 misjoined his medical malpractice claims against co-defendant CPMC to his product liability
7 claims against Bard. CPMC's Motion provides an alternative basis for federal jurisdiction.
8 Specifically, to the extent this Court agrees with CPMC that Plaintiff has failed to state a
9 claim against CPMC that is plausible on its face, CPMC is fraudulently joined in this case,
10 and its citizenship should be ignored for purposes of determining diversity jurisdiction. *See*
11 *McCabe v. Gen. Foods Corp.*, 811 F.2d 1336, 1339 (9th Cir. 1987).

12 CPMC's Motion argues in the alternative that if this Court concludes that Plaintiff has
13 a viable claim against CPMC, it should remand the case to state court for lack of subject
14 matter jurisdiction. *See* CPMC's Mot. [MDL 2641 Dkt. No. 870] at p. 17. Bard opposes
15 CPMC's Motion only to the extent it seeks remand. Even if Plaintiff's medical malpractice
16 claims against CPMC are viable, they are still fraudulently misjoined to this product liability
17 action against Bard, as argued by Bard in its Response. *See* Bard's Resp. [MDL 2641 Dkt.
18 No. 887]. Therefore, if this Court denies CPMC's Motion to Dismiss, Bard respectfully
19 requests that this Court also deny its Motion to Remand, and, instead, sever and remand to
20 state court Plaintiff's fraudulently misjoined medical malpractice claims against CPMC.

21 This 26th day of February, 2016.

22
23 s/Richard B. North, Jr.
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**Attorney for Defendants C. R. Bard, Inc. and
Bard Peripheral Vascular, Inc.**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 26, 2016, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send notification of such filing to all counsel of record.

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